

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

<p>TED ALVIN KLAUDT,</p> <p>Petitioner,</p> <p>vs.</p> <p>ROBERT DOOLEY, Warden of Mike Durfee State Prison; LAWRENCE LONG, Former S.D. Attorney General; PATRICIA J. DEVANEY, Former Assistant S.D. Attorney General,</p> <p>Respondents.</p>	<p>3:16-CV-03047-KES</p> <p>ORDER DISMISSING CASE</p>
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Plaintiff, Ted Alvin Klaudt, is an inmate at Mike Durfee State Prison. On December 5, 2016, he filed a petition for writ of habeas corpus under 28 U.S.C. § 2241(c)(3)(d), Docket 1, which the court dismissed. Docket 7. Klaudt now moves the court to reconsider through two motions making the same argument. Docket 10; Docket 11.

The federal rules do not recognize a motion to reconsider. A litigant seeking reconsideration must file a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e), or a motion seeking relief from judgment under Fed. R. Civ. P. 60(b). A Rule 59(e) motion must be filed within ten days of the entry of judgment, and if timely, it tolls the time for filing the notice of appeal under Fed. R.App. P 4(a)(4). A motion for reconsideration filed after the ten-day period is construed as a motion seeking relief from judgment under Rule 60(b).

Ysais v. Richardson, 603 F.3d 1175, 1178 n.2 (10th Cir. 2010) (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991).

Klaudt does not explain why he should be granted relief under either Rule 59 or 60, but merely argues that the court should not have dismissed his petition. He cites *White v. Lambert*, 370 F.3d 1002, 1004 (9th Cir. 2004) *overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010), and *Montez v. McKinna*, 208 F.3d 862, 864 (10th Cir. 2000) to support his motion. These cases involve defendants challenging the decision to transfer them from one prison to another, not challenging the validity of their state court convictions. Therefore, they are inapplicable to Klaudt's case.

Thus, it is ORDERED

1. Klaudt's motion for reconsideration (Docket 10) is denied.
2. Klaudt's motion for reconsideration (Docket 11) is denied.

Dated March 6, 2017.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE